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C O N F I D E N T I A L SECTION 01 OF 07 STATE 065194

SIPDIS

E.O. 12958: DECL: 06/23/2019
TAGS: [MARR](#) [PREL](#) [AF](#) [RS](#) [US](#)
SUBJECT: REVISED DRAFT OF THE RUSSIA AFGHANISTAN TRANSIT
AGREEMENT

Classified By: Ambassador Stephen D. Mull, reasons 1.4(b) and (d).

¶1. (C) This is an action request. Please see paragraph 2, 3, and 4.

¶2. (C) Post is requested to provide the revised draft of the Russia Afghanistan Transit Agreement to the MFA. The text of the revised draft is in paragraph 5 below. A Microsoft Word version of the agreement with tracked revisions will be sent via email to Embassy Moscow's Political section. Post is requested to share that electronic version with the MFA for speed and ease of editing.

EXPLANATORY NOTES

¶3. (C/REL RUSSIA) Post is also requested to draw upon the following explanatory notes for major edits that we have made following the June 17 negotiations in Moscow. The changes that both sides agreed to during our negotiations on June 17 have been incorporated into the text, but these additional explanatory notes may prevent misunderstandings and speed up the next, final round of negotiations.

¶A. Article 1, paragraph 2.a: The reference to the "Chicago Convention" removes the term "munitions of war" from the text, as requested by the Russian side. We have also here, as well as elsewhere through the text, clarified that we are talking about military transport and other state transport flights (as distinct from other military flights).

¶B. Article 2 has been revised significantly, but is based upon the original Russian version of the text. At Russia's suggestion, in paragraph 1.b. we have expanded upon the list of items that would be exempt from required stopovers in Russia. We have also added two annexes that clarify those items that would require a one-time authorization for overflight (Annex 1) and those items that would be required to stop in Russia (Annex 2).

¶C. In Article 2, paragraph 2, we have made explicit our understanding that the items covered in Article 2, paragraphs 1.a and 1.b. would be exempt from the requirement to land, and that the items in paragraph 1.d would necessitate a landing in Russia.

¶D. In Article 2, paragraph 3, we are still seeking clarification on what the Russian side means by "flight conditions."

¶E. In Article 2, paragraph 4, we include the procedure for requesting a general authorization, and in paragraph 6, we include the procedure for requesting a one-time authorization. While similar, based upon the Russian description of the requirements, the general authorization

requires less-specific information. In paragraph 5, we request Russia's agreement to decide one-time authorizations within 14 days instead of a month in light of the possible exigent nature of one-time authorizations.

¶F. For Article 2, paragraph 7, we are providing the following information on the number, type, and flight path of STATE flights that we would like to fly annually under this agreement. We estimate that we would fly 4,500 flights/year (3,500 C-17s, and 1,000 C-5s). C-17 aircraft have a maximum takeoff weight of 585,000 lbs (265,000 kg). C-5 aircraft have a maximum takeoff weight of 769,000 lbs (349,800 kg). The flights would originate mainly from Western Europe and fly on average 900 km each way over Russian territory. Our understanding is that the Russian side will use these numbers to determine their "lost revenue" for budgeting purposes. As discussed at the June 17 negotiations, any cap in the agreement should be on the number of flights, and not a monetary amount.

¶G. In Article 5, paragraph 2.b., we have deleted the word "direct" from before "performance of duty" because we do not see what distinction that word provides.

¶H. In Article 6, paragraph 1, we offer more specificity of the other types of inspections to which U.S. flights might be subject. In paragraph 3, we have added clarity to the issue

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of taxes and fees. We also continue to ask, in paragraph 3, for the right to withdraw an attempt to transit the Russian federation in lieu of inspection by the Russian authorities.

¶I. In Article 9, we have withdrawn the request for specific language on the cost of fuel and other airport services.

¶J. In Article 11, paragraph 2, we have added text to address issues of liability to ensure that the Russian government's immunity from liability will not be compromised through this agreement.

¶K. In Article 13, we have included text that is required in binding U.S. agreements, but have added text to clarify for Russia that the U.S. will not undertake activities under this agreement unless and until funds have been appropriated.

¶L. In Article 14, we respond to the Russian request for clarity that implementation of the agreement will depend on fulfilling national procedures required for entry into force.

NEXT MEETING

¶4. (SBU) Please propose a return visit by the U.S. delegation to finalize this agreement on Thursday, July 2.

TEXT OF THE USG PROPOSAL

¶5. (SBU) The text of the USG proposal that had been cleared with the Department of Defense and appropriate offices in the State Department is below.

BEGIN DRAFT TEXT OF AGREEMENT

AGREEMENT between the Government of the Russian Federation and the Government of the United States of America on the Transit of Military Property and Personnel through the Territory of the Russian Federation in Connection with the Participation of the Armed Forces of the United States of America in Efforts for Promoting the Security, Stabilization and Reconstruction of the Islamic Republic of Afghanistan

The Government of the Russian Federation (the Russian Party) and the Government of the United States of America (the U.S. Party), hereinafter collectively referred to as the

Parties,

Guided by the provisions of Resolutions 1368 (2001), 1373 (2001), 1386 (2001), and 1444 (2002) of the United Nations Security Council,

For purposes of promoting international efforts for the security, stabilization, and reconstruction of the Islamic Republic of Afghanistan,

Have agreed as follows:

Article 1

1. This Agreement defines the procedure for the transit of armaments, military equipment, military property, and personnel by the U.S. Party through the territory of the Russian Federation for purposes of supporting international efforts for the security, stabilization, and reconstruction of the Islamic Republic of Afghanistan.

2. For purposes of this Agreement the terms used herein shall mean the following:

a) "armaments, military equipment, and military property" - Items described in Article 35(a) of the Convention on International Civil Aviation done at Chicago, December 7, 1944, as well as other special equipment and other shipments for equipping the armed forces, spare parts, devices and their component parts, systems to support the daily activities of armed forces personnel, collective and individual protective gear against weapons of mass destruction, prophylaxes and treatments against the effects of weapons of mass destruction, logistics equipment and supplies, military uniforms and accessories;

b) "transit" - the movement by air of armaments, military equipment, military property and personnel through the territory of the Russian Federation by aircraft, beginning and ending outside the territory of the Russian Federation;

c) "overflight" - the movement of aircraft through the territorial airspace of the Russian Federation along routes provided by the competent Russian authorities, which begins and ends outside the territory of the Russian Federation;

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d) "aircraft" - U.S. military transport aircraft and other state transport aircraft, and aircraft chartered by the U.S. Party.

Article 2

1. a) Aircraft moving personnel carrying personal arms, means of personal protection, and uniforms; may transit without making an intermediate stop in the territory of the Russian Federation.

b) Aircraft moving spare parts; collective protective gear against weapons of mass destruction; prophylaxes and treatments for the effects of weapons of mass destruction, logistics equipment and supplies; flares; military weapons; artillery; revolvers and pistols; fire-arms and other blast-charge devices; self-propelled armored combat vehicles without weapons; flame throwers; grenade launchers; cartridges, shells, or other munitions, and their parts; and other armaments, military equipment, and military property not described in Article 2, paragraph 1.c of this Agreement may transit under a general authorization without making an intermediate stop in the territory of the Russian Federation.

c) Aircraft moving armaments, military equipment, and military property specified in Annex 1 may transit the Russian Federation under a one-time authorization. An intermediate stop is required only for such items that are also specified in Annex 2.

d) An intermediate stop in the territory of the Russian Federation is mandatory for transshipments of armaments, military equipment, and military property specified in Annex

2. Aircraft making an intermediate stop shall be allowed to continue as soon as possible after landing, and ordinarily within 24 hours of landing.

12. Transits pursuant to paragraphs 1.a and 1.b under Article 2 of this Agreement shall take place under a general authorization issued by the Russian competent authorities. Transits pursuant to paragraphs 1.c and 1.d under Article 2 of this Agreement shall take place based under a one-time authorization issued by the Russian competent authorities. The U.S. Party shall provide notice of each transit to the Russian Party in accordance with paragraph 8 of this Article.

13. The U.S. Party shall request, in writing, a general authorization from the competent Russian authorities. The general authorization issued by the Russian competent authorities shall permit transit of armaments, military equipment, military property, and personnel for a time period of twelve months. This authorization shall be automatically extended for additional twelve month periods unless the Russian Party indicates in advance and in writing through diplomatic channels that the flight conditions (U.S. requests clarification on what is meant by "flight conditions") have changed. The general authorization is automatically cancelled if this Agreement is terminated. The competent Russian authorities shall issue the general authorization within one month of receiving the U.S. Party's request if the provisions of paragraph 5 of this Article have been met.

14. In order to obtain a general authorization, the U.S. Party shall send a request in the Russian and the English languages. The request shall contain the following information:

- a) the general anticipated destinations;
- b) a general description of the cargo and personnel anticipated to be transported;
- c) the general address and general identification of the recipient of the shipment;
- d) planned period during which transits will occur;
- e) anticipated general transit routes;
- f) anticipated access points, and if necessary, possible locations for intermediate stops of the aircraft in the territory of the Russian Federation (airports and airfields open to international transport).

15. In the event of the situations not covered by a general authorization, such as the need to transship cargo or personnel not specified in the general authorization, the transit will take place based on a one-time authorization, which the U.S. Party shall request in writing from the competent Russian authorities, and which shall be valid for a period of three months from the date of issuance. A one-time transit authorization shall be issued within fourteen days after receipt of a written request from the U.S. Party by the competent Russian authorities if the provisions of paragraph 6 of this Article have been met.

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16. In order to obtain a one-time transit authorization, the U.S. Party shall send a request in the Russian and the English languages. The request shall contain the following information:

- a) the destination and a general description of the transported cargo and personnel;
- b) armaments, military equipment and military property to be transported;
- c) address and required information of the recipient of the shipment;
- d) planned transit schedule;
- e) transit route;
- f) access points, and if necessary, locations for intermediate stops of the aircraft in the territory of the Russian Federation (airports and airfields open to international transport).

17. The number of aircraft chartered by the U.S. Party making such transits is not limited. The number of U.S. military transport aircraft and other state transport aircraft making such transits shall not exceed (number to be

agreed upon) U.S. military transport aircraft and other state transport aircraft during the initial twelve months of general authorization, and in each subsequent twelve-month period of general authorization.

18. The U.S. Party shall send notice through diplomatic channels no later than 48 hours before each planned transit under this Agreement. In this regard the following information shall be indicated:

- a) country in which the aircraft is registered;
- b) type of aircraft and maximum take-off weight (MTOW);
- c) call sign;
- d) flight number, if assigned;
- e) if known, the name and grade of the aircraft commander, and the number of crew members;
- f) the presence of passengers on board the aircraft;
- g) general description of contents of the shipment, indicating the weight and size of cargo containers or cargo items, as appropriate, and their number in conventional units of measure; and
- h) route of the aircraft and overflight time.

19. The Russian Party has the right to refuse transit notified by the U.S. Party under this Agreement if it has been established that the movement of the shipment and personnel does not comply with the objectives of this Agreement, or may present a threat to the national security of the Russian Federation.

110. The Russian Party has the right to cancel a transit notified by the U.S. Party under this Agreement if the transit conditions are violated by the U.S. Party. If the transit is cancelled, the U.S. Party shall, at its own expense, ensure the return of the armaments, military equipment, military property and personnel for which the transit authorization was cancelled which were located within the territory of the Russian Federation at the time of cancellation, to a location outside the territory of the Russian Federation.

Article 3

11. The personnel on aircraft transiting the territory of the Russian Federation under this Agreement may transit without a visa on a traveling passport, or, as appropriate, with a Geneva Convention Card (military identification card) without visa or a traveling passport.

12. The aircraft transiting the territory of the Russian Federation under this Agreement shall transit the territory of the Russian Federation as quickly as possible. In the event of an intermediate landing, the Parties shall coordinate on all issues associated with supporting the stay of personnel in the territory of the Russian Federation.

Article 4

11. Personnel transiting the territory of the Russian Federation under this Agreement shall respect the laws of the Russian Federation while in the territory of the Russian Federation. The U.S. Party shall inform its personnel transiting the territory of the Russian Federation under this Agreement of the need to respect the laws of the Russian Federation.

12. While in the territory of the Russian Federation

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personnel may not leave the aircraft with weapons on their person without the permission of the competent Russian authorities.

13. While in the territory of the Russian Federation, military personnel may wear their military uniforms.

14. In case of an intermediate landing, and upon

request by the aircraft commander, competent Russian authorities shall authorize the provision of basic health and comfort services to the passengers and crew on the aircraft on a reimbursable basis.

Article 5

11. Russian Federation jurisdiction shall apply to the U.S. personnel during their stay within the territory of the Russian Federation, except for cases specified in paragraph 2 of this Article.

12. The jurisdiction of the Russian Federation shall not apply to the U.S. personnel during their stay in the territory of the Russian Federation in connection with this Agreement:

- a) if the U.S. personnel commit crimes or offenses that harm the safety or damage the property of the U.S. Party, another member of the U.S. personnel, or his property;
- b) if the U.S. personnel commit crimes or offenses in the performance of their official duties.

Article 6

11. The U.S. Party agrees that, during transit under this Agreement of armaments, military equipment, military property and personnel, it shall respect the laws of the Russian Federation pertaining to border and customs control, veterinary control and phytosanitary control.

12. If an aircraft makes an intermediate stop in the territory of the Russian Federation, the documentation pertaining to armaments, military equipment, military property, and personnel may only be inspected for purposes of border and customs control. Documents and information needed to perform border and customs control may only be requested and checked if the border and customs authorities of the Russian Federation have reason to believe that the specified property is not, in fact, the property for which transit had been authorized. In such cases, the U.S. Party shall provide a manifest of the cargo and number of personnel on board the aircraft, if not previously provided. In the event the border and customs authorities of the Russian Federation request to inspect the cargo or personnel physically, the U.S. Party shall either unload the cargo and/or personnel for inspection outside the aircraft or shall, alternatively, elect to have the aircraft depart Russian Federation territory and return to the aircraft's point of origin prior to entering Russian Federation territory.

13. Armaments, military equipment, military property, and personnel shall be allowed to cross the national border of the Russian Federation free of customs duties, license fees, undue restrictions, taxes and other similar charges.

Article 7

In cases of aircraft conditions impairing safety of flight and requiring immediate landing or grounding of aircraft, the Russian Party shall allow U.S. personnel, equipment, and repair parts access to the aircraft free of customs duties, license fees, undue restrictions, taxes and other similar charges for purposes of effecting repairs. Such U.S. personnel shall depart the territory of the Russian Federation immediately following the completion of repairs.

Article 8

While in Russian Federation territorial airspace, flights shall be carried out with respect for the laws of the Russian Federation and pursuant to the rules established by the International Civil Aviation Organization (ICAO), and this Agreement.

Article 9

11. The U.S. Party shall pay for landing fees for U.S.

military transport aircraft and other state transport

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aircraft at commercial airports in the territory of the Russian Federation. The U.S. Party and contractors of civil aircraft chartered by the U.S. Party shall each pay for fuel, ground handling, and other airport services requested and received at airports in the territory of the Russian Federation.

¶2. In support of international efforts in the Islamic Republic of Afghanistan, the Russian Party agrees to bear any loss of revenue associated with facilitating movement of U.S. military transport aircraft and other state transport aircraft free from customs inspections, customs charges, navigation charges, overflight fees, fees for landing and parking at airports owned by the Russian Party, and any similar fees or charges assessed by the Russian Party or competent Russian authorities and entities.

¶3. Civil aircraft chartered by the U.S. Party shall be subject to customs inspections fees, customs charges, landing and parking fees, navigation charges, and any other charges by the Russian Party or competent Russian authorities to the same extent other civil aircraft are subject to such fees under Russian Federation laws and regulations.

Article 10

Information obtained by one Party regarding overflight or transit may not be transmitted to a third Party without the written authorization of the other Party.

Article 11

¶1. The Parties waive any claims and all claims, other than contractual claims, against each other for damage to, loss, or destruction of property owned by a Party, or death or injury to any military or civilian personnel of either Party, arising out of activities under this Agreement.

¶2. Nothing in this Agreement shall be construed as waiving the immunity of the Parties with respect to potential third-party claims that may be brought against either of the Parties. However, the U.S. Party, at its discretion, may deal with and settle claims by third parties arising out of the acts or omissions of any U.S. personnel in accordance with U.S. law.

¶3. The U.S. Party shall ensure that operators of civil aircraft chartered by the U.S. Party have sufficient insurance coverage to pay claims that may arise from their operations in the territory of the Russian Federation.

Article 12

Disputes regarding the application and interpretation of this Agreement shall be resolved through consultations and negotiations between the Parties.

Article 13

All undertakings of the U.S. Party are subject to the availability of appropriated funds. The U.S. Party shall not undertake activities under this Agreement in the absence of appropriated funds.

Article 14

¶1. This Agreement shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force.

¶2. This Agreement shall apply provisionally from the date of its signature.

13. This Agreement may be amended in writing by the written agreement of the Parties.

14. This Agreement shall have a duration of one year from its entry into force per paragraph 1 of this Article. It shall be automatically extended for subsequent one-year periods unless either Party notifies the other Party in writing through diplomatic channels of its intention not to extend it. Either Party may terminate this Agreement at any time after notifying the other Party to that effect through diplomatic channels. In that case this Agreement shall be terminated thirty (30) days from the date of the relevant notification.

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Done at Moscow on July XX, 2009 in two copies, each in the Russian and the English languages, both texts being equally authentic.

//Signature Blocks//

ANNEX 1

The following items require one time transit authorization:

3602 00 000 0	Military explosives other than gunpowder
3604	Anti-mist rockets and other pyrotechnic items
871000 000 0	Tanks and other self-propelled armored combat vehicles with weapons, and spare parts for them
8802	Aircraft (helicopters and planes), spacecraft (including satellites) and suborbital and space carrier vehicles
9301 11 000 0	Self-propelled military weapons
9301 20 000 0	Rocket launchers; torpedo tubes and similar projectors
9305 91 000 0	Spare parts for items listed under paragraphs 9301
9306	Bombs, grenades, torpedoes, mines, missiles, and their parts

ANNEX 2

The following items require a stopover within the territory of the Russian Federation:

9301 11 000 0	Self-propelled military weapons
9301 20 000 0	Rocket launchers; torpedo tubes and similar projectors
9305 91 000 0	Parts and accessories of military weapons of heading 9301 11 000 0, and 9301 20 000 0
9306	Bombs, grenades, torpedoes, mines, and missiles, and their parts

END DRAFT TEXT OF AGREEMENT

POINT OF CONTACT

16. (U) Please contact Daniel Wartko in PM/RSAT at (202) 647-6391 or via email at WartkoDJ@state.sgov.gov for further background information.

CLINTON